IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 65 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

BROACH TEXTILE MILLS LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant
NOTICE SERVED for Respondent
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench “C” has referred the following question under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax, Ahmedabad.

> “Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to exclude the repairs and insurance expenses on motor car for the purpose of calculating disallowance under Section 37(3A) of the Income Tax Act?”

2. The assessment year is 1984-85, and the relevant accounting period is 1-4-1983 to 31-3-1984. During the relevant previous year, the assessee had incurred motor car expenses amounting to Rs.2,84,030/-, which included repairs and insurance expenses. The assessing officer took into consideration the entire motor car expenses for the purpose of calculating disallowance under Section 37(3A) of the Act. The assessee's contention that the expenses towards motor car repairs and insurance should not be considered for ascertaining the disallowance under Section 37(3A) of the Act, was negatived by the assessing officer while framing assessment under Section 143(3) of the Act vide order

dated 28-2-1987.

3. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals). Before the CIT (Appeals), it was contended that the motor car expenses included repairs and insurance expenses also, which are allowable under Section 31 of the Act, and could therefore, not have been taken into account for the purpose of calculating disallowance under Section 37(3A) of the Act. Following the decision of the Income Tax Appellate Tribunal, Bombay in the case of M/s B.A. & Bros. (Bombay) Pvt. Ltd., wherein it had been held that section 37(3A) overrides only Section 37(1) and does not override Section 31 under which the repairs, inter alia, of machinery and plant are to be allowed which would cover motor cars, the CIT (Appeals) vide his order dated 15/10/1987, upheld the contention of the assessee. The CIT (Appeals), accordingly, directed the assessing officer to exclude the motor car repairs and insurance expenses for the purpose of calculation under Section 37(3A) of the Act.

4. The revenue carried the matter in appeal before the Tribunal. The Tribunal vide its order dated 15th

October 1990 upheld the order of Commissioner (Appeals) and dismissed the appeal.

5. Section 37(1) of the Act, as it stood at the relevant time, reads as under :

> "Any expenditure (not being expenditure of the nature described in sections 30 to 36 and section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business and profession."

Section 37(3A) of the Act reads as under :

> *"37 (3A). Notwithstanding anything contained in sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in sub-section (3B) exceeds one hundred thousand rupees, twenty per cent of such excess shall not be allowed as deduction in computing the income*

chargeable under the head "Profits and gains of business or profession"."

A plain reading of section 37(1) of the Act makes it clear that the same is applicable to expenditure not being expenditure of the nature described in sections 30 to 36 of the Act. Accordingly, the provisions contained in section 37(3A) would apply only to those items of expenditure that are not covered by sections 30 to 36, but covered by section 37(1) of the Act. The non-obstante clause in sub-section (3A) relates only to the computation of allowance referred to in section 37(1) in respect of expenditure covered by section 37(1) of the Act. The expenditure in respect of which sub-section (3A) can be attracted is only that which falls under section 37 and not under section 31. The deduction in respect of the expenditure incurred on repairs and insurance of motor-car which is plant as defined in section 43(3) of the Act, is allowable under section 31 of the Act and not under section 37 of the Act. Hence, the expenditure incurred on repairs and insurance of motorcars cannot be considered for disallowance under sub-section (3A) of section 37 of the Act. Accordingly, the expenditure incurred by the assessee in respect of

repairs and insurance of motorcar could not have been taken into consideration for the purpose of calculating the aggregate expenditure incurred by the assessee for the purposes of section 37(3A) of the Act.

6. This view is fortified by a decision of this Court, in the case of Commissioner of Income Tax v. Ahmedabad Mfg. & Calico Printing Co. Ltd., [1992] 197 ITR 538, wherein while dealing with the question as to whether the expenditure incurred for residential accommodation in the nature of guest house, would be hit by Section 37(4) of the Act, it was held thus:

> *"The opening non obstante clause of sub-section (4) of Section 37 makes it clear that the expenditure which is referred to in clause (i) of sub-section (4) is one which would be allowable as deduction under Section 37(1). In order to attract the provisions of sub-section (4), it must first be established that it is an expenditure which is covered by section 37(1). Section 37(1) refers to expenditure (i) which is not an expenditure of the nature described in sections 30 to 36; (ii) which is not an expenditure of capital nature;*

and (iii) which is not personal expenditure of the assessee. It is, therefore, evident that if the expenditure in question is an expenditure of the nature described in sections 30 to 36, it would not fall under Section 37(1).”.

7.It may be noted that a Full Bench of the Kerala High Court in the case of Commissioner of Income Tax v. Travancore Cements Ltd., [1999] 240 ITR 816 has also taken a similar view, and held as follows :

“As the expenditure on repairs of vehicles including motor cars are covered by section 31 of the Act which is specifically excluded from the ambit of section 31(1) of the Act, section 37(3A) which has application only in respect of the items mentioned in section 37(3B) of the Act, the non-obstante clause in section 37(3A) shall not have any overriding effect in respect of the other provisions pertaining to the allowances of expenditure under sections 30 to 36 of the Act. The expenditure towards repairs and premium paid towards insurance of motor cars is deductible under section 31 of the Act and the same

expenditure will not fall within the mischief of section 37(3A) of the Act."

8. The Tribunal was, therefore, right in law and on facts in directing the Income Tax Officer to exclude the repairs and insurance expenses on motor car for the purpose of calculating disallowance under Section 37(3A) of the Income Tax Act. The question is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the revenue.

9. The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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